

AMENDED IN ASSEMBLY MARCH 8, 2012
AMENDED IN ASSEMBLY JANUARY 23, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Bradford

January 4, 2012

An act to amend Section ~~11166~~ 152.3 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as amended, Bradford. Child abuse reporting.

Existing law generally requires a person who reasonably believes that he or she has observed the commission of a lewd or lascivious act on a child who is under 14 years of age by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to notify a peace officer. A failure to report pursuant to those provisions is a misdemeanor punishable by a fine of not more than \$1,500, by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

This bill would require a person to notify a peace officer when the person believes that he or she has observed the commission of a lewd and lascivious act on a child under 14 years of age, regardless of whether force, violence, duress, menace, or fear of immediate and lawful bodily injury is used. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law specifies that any other person may, but is not required to, report a known or suspected instance of child abuse or neglect to any police department, sheriff's department, or to specified other entities.~~

~~This bill would require any person to report to a peace officer a known or suspected instance of a child being the victim of sexual abuse, and would make a failure to report punishable by imprisonment in a county jail for a period of 6 months or a fine of up to \$1,000, or by both that imprisonment and fine. By creating a new crime, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 152.3 of the Penal Code is amended to
- 2 read:
- 3 152.3. (a) Any person who reasonably believes that he or she
- 4 has observed the commission of any of the following offenses
- 5 where the victim is a child under the age of 14 years of age shall
- 6 notify a peace officer, as defined in Chapter 4.5 (commencing with
- 7 Section 830) of Title 3 of Part 2:
- 8 (1) Murder.
- 9 (2) Rape.

1 (3) A violation of *subdivision (a) of, or* paragraph (1) of
2 subdivision (b) of, Section 288 of the Penal Code.

3 (b) This section shall not be construed to affect privileged
4 relationships as provided by law.

5 (c) The duty to notify a peace officer imposed pursuant to
6 subdivision (a) is satisfied if the notification or an attempt to
7 provide notice is made by telephone or any other means.

8 (d) Failure to notify as required pursuant to subdivision (a) is a
9 misdemeanor and is punishable by a fine of not more than one
10 thousand five hundred dollars (\$1,500), by imprisonment in a
11 county jail for not more than six months, or by both that fine and
12 imprisonment.

13 (e) The requirements of this section shall not apply to the
14 following:

15 (1) A person who is related to either the victim or the offender,
16 including a husband, wife, parent, child, brother, sister,
17 grandparent, grandchild, or other person related by consanguinity
18 or affinity.

19 (2) A person who fails to report based on a reasonable mistake
20 of fact.

21 (3) A person who fails to report based on a reasonable fear for
22 his or her own safety or for the safety of his or her family.

23 *SEC. 2. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

32 ~~SECTION 1. Section 11166 of the Penal Code is amended to~~
33 ~~read:~~

34 ~~11166. (a) Except as provided in subdivision (d), and in~~
35 ~~Section 11166.05, a mandated reporter shall make a report to an~~
36 ~~agency specified in Section 11165.9 whenever the mandated~~
37 ~~reporter, in his or her professional capacity or within the scope of~~
38 ~~his or her employment, has knowledge of or observes a child whom~~
39 ~~the mandated reporter knows or reasonably suspects has been the~~
40 ~~victim of child abuse or neglect. The mandated reporter shall make~~

~~1 an initial report to the agency immediately or as soon as is
2 practicably possible by telephone and the mandated reporter shall
3 prepare and send, fax, or electronically transmit a written followup
4 report thereof within 36 hours of receiving the information
5 concerning the incident. The mandated reporter may include with
6 the report any nonprivileged documentary evidence the mandated
7 reporter possesses relating to the incident.~~

~~8 (1) For purposes of this article, “reasonable suspicion” means
9 that it is objectively reasonable for a person to entertain a suspicion,
10 based upon facts that could cause a reasonable person in a like
11 position, drawing, when appropriate, on his or her training and
12 experience, to suspect child abuse or neglect. “Reasonable
13 suspicion” does not require certainty that child abuse or neglect
14 has occurred nor does it require a specific medical indication of
15 child abuse or neglect; any “reasonable suspicion” is sufficient.
16 For the purpose of this article, the pregnancy of a minor does not,
17 in and of itself, constitute a basis for a reasonable suspicion of
18 sexual abuse.~~

~~19 (2) The agency shall be notified and a report shall be prepared
20 and sent, faxed, or electronically transmitted even if the child has
21 expired, regardless of whether or not the possible abuse was a
22 factor contributing to the death, and even if suspected child abuse
23 was discovered during an autopsy.~~

~~24 (3) Any report made by a mandated reporter pursuant to this
25 section shall be known as a mandated report.~~

~~26 (b) If after reasonable efforts a mandated reporter is unable to
27 submit an initial report by telephone, he or she shall immediately
28 or as soon as is practicably possible, by fax or electronic
29 transmission, make a one-time automated written report on the
30 form prescribed by the Department of Justice, and shall also be
31 available to respond to a telephone followup call by the agency
32 with which he or she filed the report. A mandated reporter who
33 files a one-time automated written report because he or she was
34 unable to submit an initial report by telephone is not required to
35 submit a written followup report.~~

~~36 (1) The one-time automated written report form prescribed by
37 the Department of Justice shall be clearly identifiable so that it is
38 not mistaken for a standard written followup report. In addition,
39 the automated one-time report shall contain a section that allows
40 the mandated reporter to state the reason the initial telephone call~~

1 was not able to be completed. The reason for the submission of
2 the one-time automated written report in lieu of the procedure
3 prescribed in subdivision (a) shall be captured in the Child Welfare
4 Services/Case Management System (CWS/CMS). The department
5 shall work with stakeholders to modify reporting forms and the
6 CWS/CMS as is necessary to accommodate the changes enacted
7 by these provisions.

8 (2) This subdivision shall not become operative until the
9 CWS/CMS is updated to capture the information prescribed in this
10 subdivision.

11 (3) This subdivision shall become inoperative three years after
12 this subdivision becomes operative or on January 1, 2009,
13 whichever occurs first.

14 (4) On the inoperative date of these provisions, a report shall
15 be submitted to the counties and the Legislature by the Department
16 of Social Services that reflects the data collected from automated
17 one-time reports indicating the reasons stated as to why the
18 automated one-time report was filed in lieu of the initial telephone
19 report.

20 (5) Nothing in this section shall supersede the requirement that
21 a mandated reporter first attempt to make a report via telephone;
22 or that agencies specified in Section 11165.9 accept reports from
23 mandated reporters and other persons as required.

24 (e) Any mandated reporter who fails to report an incident of
25 known or reasonably suspected child abuse or neglect as required
26 by this section is guilty of a misdemeanor punishable by up to six
27 months confinement in a county jail or by a fine of one thousand
28 dollars (\$1,000) or by both that imprisonment and fine. If a
29 mandated reporter intentionally conceals his or her failure to report
30 an incident known by the mandated reporter to be abuse or severe
31 neglect under this section, the failure to report is a continuing
32 offense until an agency specified in Section 11165.9 discovers the
33 offense.

34 (d) (1) A clergy member who acquires knowledge or a
35 reasonable suspicion of child abuse or neglect during a penitential
36 communication is not subject to subdivision (a). For the purposes
37 of this subdivision, "penitential communication" means a
38 communication, intended to be in confidence, including, but not
39 limited to, a sacramental confession, made to a clergy member
40 who, in the course of the discipline or practice of his or her church,

1 denomination, or organization, is authorized or accustomed to hear
2 those communications, and under the discipline, tenets, customs,
3 or practices of his or her church, denomination, or organization,
4 has a duty to keep those communications secret.

5 (2) Nothing in this subdivision shall be construed to modify or
6 limit a clergy member's duty to report known or suspected child
7 abuse or neglect when the clergy member is acting in some other
8 capacity that would otherwise make the clergy member a mandated
9 reporter.

10 (3) (A) On or before January 1, 2004, a clergy member or any
11 custodian of records for the clergy member may report to an agency
12 specified in Section 11165.9 that the clergy member or any
13 custodian of records for the clergy member, prior to January 1,
14 1997, in his or her professional capacity or within the scope of his
15 or her employment, other than during a penitential communication,
16 acquired knowledge or had a reasonable suspicion that a child had
17 been the victim of sexual abuse that the clergy member or any
18 custodian of records for the clergy member did not previously
19 report the abuse to an agency specified in Section 11165.9. The
20 provisions of Section 11172 shall apply to all reports made pursuant
21 to this paragraph.

22 (B) This paragraph shall apply even if the victim of the known
23 or suspected abuse has reached the age of majority by the time the
24 required report is made.

25 (C) The local law enforcement agency shall have jurisdiction
26 to investigate any report of child abuse made pursuant to this
27 paragraph even if the report is made after the victim has reached
28 the age of majority.

29 (e) Any commercial film and photographic print processor who
30 has knowledge of or observes, within the scope of his or her
31 professional capacity or employment, any film, photograph,
32 videotape, negative, or slide depicting a child under the age of 16
33 years engaged in an act of sexual conduct, shall report the instance
34 of suspected child abuse to the law enforcement agency having
35 jurisdiction over the case immediately, or as soon as practicably
36 possible, by telephone and shall prepare and send, fax, or
37 electronically transmit a written report of it with a copy of the film,
38 photograph, videotape, negative, or slide attached within 36 hours
39 of receiving the information concerning the incident. As used in
40 this subdivision, "sexual conduct" means any of the following:

1 ~~(1) Sexual intercourse, including genital-genital, oral-genital,~~
2 ~~anal-genital, or oral-anal, whether between persons of the same or~~
3 ~~opposite sex or between humans and animals.~~

4 ~~(2) Penetration of the vagina or rectum by any object.~~

5 ~~(3) Masturbation for the purpose of sexual stimulation of the~~
6 ~~viewer.~~

7 ~~(4) Sadomasochistic abuse for the purpose of sexual stimulation~~
8 ~~of the viewer.~~

9 ~~(5) Exhibition of the genitals, pubic, or rectal areas of any person~~
10 ~~for the purpose of sexual stimulation of the viewer.~~

11 ~~(f) Any mandated reporter who knows or reasonably suspects~~
12 ~~that the home or institution in which a child resides is unsuitable~~
13 ~~for the child because of abuse or neglect of the child shall bring~~
14 ~~the condition to the attention of the agency to which, and at the~~
15 ~~same time as, he or she makes a report of the abuse or neglect~~
16 ~~pursuant to subdivision (a).~~

17 ~~(g) (1) Any other person who has knowledge of or observes a~~
18 ~~child whom he or she knows or reasonably suspects has been a~~
19 ~~victim of child abuse or neglect, except as described in paragraph~~
20 ~~(2), may report the known or suspected instance of child abuse or~~
21 ~~neglect to an agency specified in Section 11165.9.~~

22 ~~(2) Any other person who has knowledge of or observes a child~~
23 ~~whom he or she knows or reasonably suspects has been a victim~~
24 ~~of sexual abuse shall report the known or suspected instance of~~
25 ~~sexual abuse to a peace officer, as defined in Chapter 4.5~~
26 ~~(commencing with Section 830) of Title 3 of Part 2. Any person~~
27 ~~who fails to report an incident of known or reasonably suspected~~
28 ~~sexual abuse as required by this paragraph is guilty of a~~
29 ~~misdemeanor, punishable by up to six months imprisonment in a~~
30 ~~county jail or by a fine of one thousand dollars (\$1,000), or by~~
31 ~~both that imprisonment and fine.~~

32 ~~(3) For purposes of this section, "any other person" includes a~~
33 ~~mandated reporter who acts in his or her private capacity and not~~
34 ~~in his or her professional capacity or within the scope of his or her~~
35 ~~employment.~~

36 ~~(h) When two or more persons, who are required to report,~~
37 ~~jointly have knowledge of a known or suspected instance of child~~
38 ~~abuse or neglect, and when there is agreement among them, the~~
39 ~~telephone report may be made by a member of the team selected~~
40 ~~by mutual agreement and a single report may be made and signed~~

1 by the selected member of the reporting team. Any member who
2 has knowledge that the member designated to report has failed to
3 do so shall thereafter make the report.

4 (i) ~~(1)~~ The reporting duties under this section are individual,
5 and no supervisor or administrator may impede or inhibit the
6 reporting duties, and no person making a report shall be subject
7 to any sanction for making the report. However, internal procedures
8 to facilitate reporting and apprise supervisors and administrators
9 of reports may be established provided that they are not inconsistent
10 with this article.

11 ~~(2)~~ The internal procedures shall not require any employee
12 required to make reports pursuant to this article to disclose his or
13 her identity to the employer.

14 ~~(3)~~ Reporting the information regarding a case of possible child
15 abuse or neglect to an employer, supervisor, school principal,
16 school counselor, coworker, or other person shall not be a substitute
17 for making a mandated report to an agency specified in Section
18 11165.9.

19 ~~(j)~~ A county probation or welfare department shall immediately,
20 or as soon as practicably possible, report by telephone, fax, or
21 electronic transmission to the law enforcement agency having
22 jurisdiction over the case, to the agency given the responsibility
23 for investigation of cases under Section 300 of the Welfare and
24 Institutions Code, and to the district attorney's office every known
25 or suspected instance of child abuse or neglect, as defined in
26 Section 11165.6, except acts or omissions coming within
27 subdivision (b) of Section 11165.2, or reports made pursuant to
28 Section 11165.13 based on risk to a child which relates solely to
29 the inability of the parent to provide the child with regular care
30 due to the parent's substance abuse, which shall be reported only
31 to the county welfare or probation department. A county probation
32 or welfare department also shall send, fax, or electronically transmit
33 a written report thereof within 36 hours of receiving the information
34 concerning the incident to any agency to which it makes a
35 telephone report under this subdivision.

36 ~~(k)~~ A law enforcement agency shall immediately, or as soon as
37 practicably possible, report by telephone, fax, or electronic
38 transmission to the agency given responsibility for investigation
39 of cases under Section 300 of the Welfare and Institutions Code
40 and to the district attorney's office every known or suspected

1 instance of child abuse or neglect reported to it, except acts or
2 omissions coming within subdivision (b) of Section 11165.2, which
3 shall be reported only to the county welfare or probation
4 department. A law enforcement agency shall report to the county
5 welfare or probation department every known or suspected instance
6 of child abuse or neglect reported to it which is alleged to have
7 occurred as a result of the action of a person responsible for the
8 child's welfare, or as the result of the failure of a person responsible
9 for the child's welfare to adequately protect the minor from abuse
10 when the person responsible for the child's welfare knew or
11 reasonably should have known that the minor was in danger of
12 abuse. A law enforcement agency also shall send, fax, or
13 electronically transmit a written report thereof within 36 hours of
14 receiving the information concerning the incident to any agency
15 to which it makes a telephone report under this subdivision.

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.